IN THE HIGH COURT OF JUDICATURE AT BOBBY
APPELLATE SIDE CIVIL JURISDICTION

C.A. NO.407 OF 2007
IN
FIRST APPEAL NO.3136 OF 2006

1. M/s.S.Kumar Hotel Pvt.Ltd. & anr. — Applicants Appellants orig.deft nos. 2 & 3.

vs.

1. M/s.Vijay Enterprises & anr. — Respondents Orig.Plff & Deft no.1.

Mr.M.M.Sathaye for the appellant.

Mr.Kishore M. Jawle for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 29th October, 2007

P.C.

The appeal is admitted by this Court and the same is pending.

2. While dismissing the Suit, Civil Judge, Senior Division, Nasik (trial Court) has passed the order in the following words:

> "1. Suit is dismissed and the counter claim filed by defendant No. 2 and 3 is decreed as follows:
>
> 2. Plaintiff do pay Rs.4,60,250/- to the defendant Nos. 2 and 3 with interest @ 18% p.a. thereon from the date of filing of suit until its realisation and if defendant Nos. 2 and 3 receive any compensation from the J.M.F.C. Court in the prosecution instituted with respect to the dis-honour of cheque, the

said compensation amount would be deducted from the decretal amount in view of Section 357 clause (5) of Cr.P.C. "

3. The appellant-original defendants 2 and 3 by this application are praying to stay the order of adjustment as contemplated in view of Section 357 (5) of Code of Criminal Procedure, 1973 (Cr.P.C.) and also on the foundation of **1993 (3) Mh.L.J. 81, Vijaykumar B. Agarwal vs. Govindbhai Dayal Mange & anr.**

4. Unless the matter is heard finally in all respects including the submission as raised referring to the Vijaykumar (supra), at this stage of the proceeding, I am of the view that the order of adjustment as referred and reproduced above cannot be said to be unjust or without jurisdiction. Therefore keeping all points open for final hearing, I am not inclined to grant ad-interim relief as prayed in this civil application.

5. Civil application is accordingly dismissed.

[ANOOP V. MOHTA,J.]